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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/672,923	09/28/2000	Michael Ferraro	P99,1195	8586

7590 01/18/2002

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EXAMINER

CUEVAS, PEDRO J

ART UNIT	PAPER NUMBER
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2834

DATE MAILED: 01/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/672,923

Applicant(s)

FERRARO, MICHAEL

Examiner

Pedro J. Cuevas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: .

DETAILED ACTION

Drawings

1. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Specification

2. The disclosure is objected to because of the following informalities: in page 11, line 1 of the Description Of The Preferred Embodiments, the adjoining duct is identified with a 27, instead of the previously used and shown in the drawings 72.

Appropriate correction is required.

Claim Objections

3. Claim 6 is objected to because it includes reference characters, which are not enclosed within parentheses.

Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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6. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. An example of these errors is the following claim segment of claim 1: “ ... underground turbine assembly air flow interacts with to produce ... ”.

7. Claim 1 recites the following limitations:

- “said mast top end”
- “said sail”
- “said braced boom”.

There is insufficient antecedent basis for this limitation in the claim.

8. Claims 2 & 5 recite the following limitations:

- “said sail”
- “said braced boom”.

There is insufficient antecedent basis for this limitation in the claim.

9. Claims 3, 4 & 13 recite the limitation “the sail”. There is insufficient antecedent basis for this limitation in the claim.

10. Claims 6 & 7 recite the limitation “the mast”. There is insufficient antecedent basis for this limitation in the claim.

11.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1, 6, 7, 11 & 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,936,652 to Levine in view of U.S. Patent No. 5,784,978 to Saiz.

Levine clearly teaches the construction of a wind powered generating device (Figure 1) comprising:

- a tube cluster comprising a central outlet tube (20) having a narrow center for channeling an upward flowing airflow, and
- an inlet tube (22) having a collector end located at ground level,
- a connecting end,
- a wall, and
- a rim located at the collector end;

the wind powered generating device further comprising:

- a collector assembly (21),
- a top end to the mast top end, and

the wind powered generating device further comprising:

- an underground turbine assembly air flow interacts with to produce usable electric power.

Saiz teaches the construction of a collector loop having the sail being connected at a bottom end to the braced boom.

It would have been obvious to one skilled in the art at the time the invention was made to use the collector loop disclosed by Saiz on the wind powered generating device disclosed by Levine for the purpose of constructing a sail equipped wind energy catchment system.

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14. With regards to claims 6 & 7 Saiz teaches the construction of a collector loop which is:
positioned at said top end of said mast, and moves down said mast in response to the detection of critical load conditions with the aid of a collector loop track in said mast, being initiated by the operation of a release; and
a sock, which is pulled, down over said mast and sail by said collector loop;
said emergency sail collector collector loop is a weighted collector loop that moves down said mast primarily with the aid of gravity; and
said emergency sail collector further comprises a raising mechanism for raising said collector loop back to said top of said mast for the purpose of constructing a wind energy catchment system.

15. With regards to claim 11, Levine discloses a wind generating apparatus, further comprising a solar collector as clearly stated in the abstract.

16. With regards to claim 12, Levine discloses a wind generating apparatus, wherein the central outlet tube further comprises heat-radiating surfaces (94) as shown in Figure 10.

17. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,936,652 to Levine in view of U.S. Patent No. 5,784,978 to Saiz as applied to claims 1, 11 & 12 above, further in view of U.S. Patent No. 5,134,952 to Doolittle.

Levine in view of Saiz discloses a wind powered generating device as described above.

However, it fails to disclose a wind generating apparatus, further comprising:

a tensioner, the tensioner being affixed to the braced boom and to the bottom end of the sail, and

said tensioner comprises:

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a counterbalance weight;

a cable affixed on one end to said bottom end of said sail, and affixed on an other end to said counterbalance weight, said counterbalance weight providing a constant tension on said sail.

Doolittle teaches the construction of a tensioning mechanism, the tensioning mechanism being affixed to the braced boom and to the bottom end of the sail, the tensioner comprising: a counterbalance weight and a cable affixed on one end to said bottom end of said sail, and affixed on an other end to said counterbalance weight, said counterbalance weight providing a constant tension on said sail for the purpose of adjusting the downhaul tension and/or outhaul tension.

It would have been obvious to one skilled in the art at the time the invention was made to use the tensioning mechanism disclosed by Doolittle on the wind powered generating device disclosed by Levine for the purpose of adjusting the downhaul tension and/or outhaul tension.

18. Claim 8-10 & 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,936,652 to Levine in view of U. S. Patent No. 5,784,978 to Saiz as applied to claims 1, 6, 7, 11 & 12 above, and further in view of common knowledge in the art.

Levine in view of Saiz discloses the claimed invention except for:

an electric motor used to pull said collector loop down said collector loop track;

and

a raising mechanism for raising said collector loop back to said top of said mast.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a common electric motor on a sail raising mechanism, since it has been held that broadly providing a mechanical or automatic means to replace manual activity

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which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 19-1.

19. With regards to claim 9, Levine in view of Saiz discloses the claimed invention except for:

the central outlet tube having a height that is less than half of the diameter of the turbine contained within it; and

the inlet tubes having a horizontal width that is greater than a vertical height.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct a Wind Power Generation Device according to the disclosed proportions, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

20. With regards to claim 10, it must be noted that Levine in view of Saiz discloses the claimed invention except for the tube cluster comprising multiple inlet tubes arranged in a staggered pattern. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add multiple inlet tubes arranged in a staggered pattern to the tube cluster, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

21. With regards to claim 14, it must be noted that Levine in view of Saiz discloses the claimed invention except for the inlet tubes and central output tube are constructed from low profile modular components capable of being transported by truck. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the inlet

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tubes and central output tube are constructed from low profile modular components capable of being transported by truck since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416, and that making an old device portable or movable without producing any new and unexpected result involves only routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA 1952).

22. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,936,652 to Levine in view U. S. Patent No. 5,784,978 to Saiz as applied to claims 1, 6, 7, 11 & 12 above, and further in view of DE004234649A1 to Offenlegungsschrift.

Levine in view of Saiz discloses the construction of a wind powered generating device (Figure 1) as described in claim 1.

However, it fails to disclose a wind generating apparatus, wherein the collector assembly further comprises:

a steering sail oriented in a direction perpendicular to the sail.

Offenlegungsschrift teaches a steering sail (1) oriented in a direction perpendicular to the sail for the purpose of allowing the circular hoop to face any wind direction.

It would have been obvious to one skilled in the art at the time the invention was made to use the steering sail disclosed by Offenlegungsschrift on the wind powered generating device disclosed by Levine for the purpose of allowing the circular hoop to face any wind direction.

Allowable Subject Matter

23. Claim 5 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

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Conclusion

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro J. Cuevas whose telephone number is (703) 308-4904. The examiner can normally be reached on M-F from 8:30 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Néstor R. Ramírez can be reached on (703) 308-1371. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-1341 for regular communications and (703) 305-3432 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Pedro J. Cuevas
January 14, 2002


